

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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APR 8 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

IN THE MATTER OF

AMENDMENT TO THE COMMISSION'S)
REGULATORY POLICIES GOVERNING)
DOMESTIC FIXED SATELLITES AND)
SEPARATE INTERNATIONAL SYSTEMS)

IB DOCKET NO. 95-41

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ADDITIONAL COMMENTS OF CAPITAL CITIES/ABC, INC.

Capital Cities/ABC, Inc. ("Capital Cities/ABC"), by its attorneys, hereby files these comments in response to the Notice of Proposed Rulemaking ("NPRM") issued April 25, 1995, in the above-captioned proceeding. Capital Cities/ABC jointly is filing comments in this same proceeding with CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. (collectively "the Networks"). Capital Cities/ABC files these separate comments in order to address an additional issue concerning the protection of U.S. copyrighted programming distributed on a transborder basis by U.S. domestic satellites.

The central focus of the Commission's NPRM is its proposal to treat U.S.-licensed separate international satellite operators such as PanAmSat, Orion and Columbia and U.S.-licensed domestic satellite operators under a single regulatory scheme whereby all these U.S.-licensed satellite operators each can

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provide domestic service and international service on a co-primary basis. To implement this change in policy, the Commission proposes, among other things, to eliminate the Transborder Policy under which U.S. domestic satellites have been subject to certain restrictions in providing international satellite services between the United States and transborder locations such as the Caribbean and Central and South America.

As discussed in the Networks' comments filed this same day, Capital Cities/ABC generally supports the Commission's proposal to allow U.S.-licensed satellites to provide U.S. international and U.S. domestic communications on a co-primary basis. The removal of regulatory distinctions between U.S.-licensed domestic and international satellites should lead to additional competition in both the U.S. domestic and U.S. international communications markets, resulting in reduced rates and increased end user options and operational flexibility.

In conjunction with the elimination of the Transborder Policy, however, Capital Cities/ABC urges the Commission to consider ways to eliminate, or at least reduce, the growing problem of copyright violations that have been facilitated by the transborder transmissions which are incidental to the distribution of programming here in the United States via domestic satellites. As domestic satellites have obtained transborder authority on a more widespread basis, Capital Cities/ABC has become aware of a greater number of occasions when signals containing its copyrighted programming are being received

and retransmitted without its permission in Caribbean and Latin American locations. Programming package services such as Prime Time 24 or Netlink use domestic satellites to distribute U.S. broadcast signals for sale to overseas locations. The elimination of the Transborder Policy in its entirety, or its expansion to include direct broadcast service ("DBS"), presumably will facilitate the ease from a regulatory standpoint with which additional Caribbean and Latin American locations become receive-points for program materials originating in the United States. This may exacerbate the already serious problem of the unauthorized retransmission of copyrighted programming.

This problem results from the incidental overlap of three factors. First, domestic copyright compulsory licenses permit satellite carriers to take broadcast signals containing copyrighted programming and redistribute them domestically via satellite without the permission of the copyright holders.^{1/} Second, some of the satellites used for such retransmission incidentally have footprints large enough to enable the distribution of this programming product in the Caribbean and Central America. Third, the Commission's transborder policy permits such foreign distribution. While such distribution is possible, unauthorized distribution of copyrighted programming is not appropriate.

The satellite services profiting from the sale of these signals outside the U.S. know or have reason to know that they

^{1/} 17 U.S.C. §§111 and 119.

are facilitating copyright violations by foreign cable systems as well as by other distributors purchasing these signals. Such foreign distributors in many cases retransmit those signals to their customers without the permission of the owners of the copyrighted programming. Put another way, if a few U.S. companies were not taking advantage of the transborder policy to sell signals (for which they are authorized under U.S. law to sell only domestically) to overseas distributors with knowledge or reason to know that they are facilitating copyright violations, the copyright violations would not be occurring.

Currently, the Commission includes the following language in the public notices granting transborder and other authorizations: "This [grant] shall not be construed as authorizing the distribution of programming where the appropriate copyright clearances have not been obtained or where the U.S. Government has determined that appropriate copyright protection does not exist." Based upon the Networks' experience, this notice is not providing a sufficient deterrent to carriage of unauthorized programming.

Because the laws of other countries do not necessarily offer the same level of copyright protections or access to meaningful redress for copyright violations as U.S. laws, even apart from the burden and expense of bringing copyright actions in a multitude of various jurisdictions, those involved in the unauthorized retransmission of programming may assume that the United States is not interested in protecting the rights of U.S.

copyright holders. As a result, for example, Capital Cities/ABC's efforts to sell its ABC News and other programming directly to foreign cable systems and other distributors in the Caribbean and Latin America largely have been thwarted. Therefore, the Commission should take steps to enhance the protection of U.S. copyright holders with regard to overseas transmissions of their copyrighted programming.

As the Commission is aware, enhancing the protection of U.S. copyright owners from having their works are exploited abroad has been a top priority both of Congress and the Executive Branch for more than a decade. This objective is reflected in numerous trade statutes, such as the Caribbean Basin Initiative, as well as in negotiations over NAFTA and the TRIPS agreement within GATT. Although we realize that the Commission is not primarily responsible for copyright enforcement, the Commission is obliged to consider the impact of its policies on other statutory schemes,^{2/} and it has acted accordingly to protect copyrightrelated interests.^{3/} Here, the improper activities of the program packagers have a direct impact on U.S. broadcasters by depriving them of revenues to which they are entitled. We urge the consideration of several simple options, which would require minimal effort by the Commission, aimed at addressing the

^{2/} Storer Communications, Inc. v. FCC, 763 F.2d 436, 443 (D.C. Cir. 1985).

^{3/} Cf. 47 C.F.R. §76.92 (network non-duplication) and 47 C.F.R. §76.151 (syndicated exclusivity).

problem of the unauthorized receipt and retransmission of U.S. copyrighted programming.

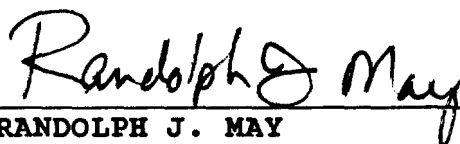
Specifically, the Commission should condition the satellite authorizations on a requirement that the satellite operator obtain and maintain on file a representation that the originator of any domestic signal carried by any programming service customer of the satellite operator authorizes the foreign distribution of that signal. Similarly, the Commission could condition the satellite authorizations on a requirement that the satellite operator obtain and maintain on file a representation from its customers, such as programming services, that appropriate copyright clearances have been obtained from all of the customers' authorized receive points. In conjunction with this requirement, the Commission should indicate that, based upon its receipt of apparently reliable and sufficient information concerning alleged copyright violations, it may order satellite operators to show cause why they should not be required to cease carrying transmissions that appear to result in violations of copyrights and/or in violation of the prohibition embodied in Section 705 of the Communications Act of 1934, as amended, 47 U.S.C. § 605, against the unauthorized receipt, or assisting in the unauthorized receipt of, satellite transmissions. The Commission also may wish to consider other appropriate measures to enforce the prohibitions against copyright violations and unauthorized reception of satellite transmissions.

In conclusion, Capital Cities/ABC urges the Commission to take actions consistent with the views expressed herein and in the comments filed jointly by Capital Cities/ABC, Inc., CBS Inc., National Broadcasting Company, Inc., and Turner Broadcasting System, Inc. in this same proceeding.

Respectfully submitted,

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June 8, 1995

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CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, hereby certify that a copy of the foregoing **Additional Comments of Capital Cities/ABC, Inc.** was served by first-class mail, postage prepaid, this 8th day of June, 1995, on the following persons:

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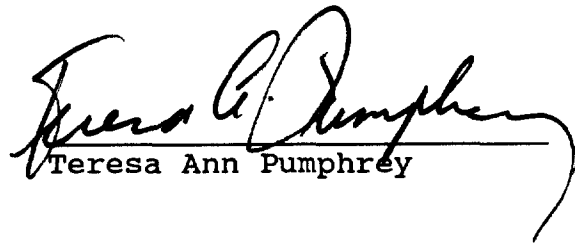
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